

METHAMPHETAMINE AND TRIBAL CRIMINAL JURISDICTION
ON THE WIND RIVER RESERVATION

BY

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Abstract.

The drug methamphetamine is creating an epidemic on Tribal reservations. Non-Indian drug dealers are targeting vulnerable addicted populations, including the Wind River Reservation in Wyoming in hopes to replace the alcohol addiction already present with addiction to methamphetamines. Under U.S. federal law, Tribal Nations do not have criminal jurisdiction over non-Indians. The methodology used to research this problem comprised mainly of traditional legal researching court cases, law review articles, news articles, and other documents such as testimonies before Congress. The findings suggested various remedies used by Tribal Nations are utilizing in conjunction with other state and local law enforcement agencies. However, in terms of exercising self-determination and preventing any further diminishment of inherent Tribal sovereignty, the implementation of banishment sentencing of non-Indians best achieves these goals stemming from the methamphetamine epidemic.

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Introduction

A. The “Methamphetamine Epidemic” in Indian Country

Tribal reservations¹ across the United States are being targeted by non-Indians and non-U.S. citizens for the sale of alcohol and drugs.² Reservation communities are familiar with alcohol and drug abuse; however, a new drug is sweeping across reservation causing more harm than any other before it, methamphetamine, also known simply as “meth.” It is a cheap and highly toxic drug that can quickly become addictive, create damaging effects to a users body and mind, and can set off its users to extremely violent acts towards others and while committing crimes.³ It has the potential to destroy Tribal Nations similar to that of small pox and other diseases of previous centuries. The lives of Tribal members, their language, their culture and traditional knowledge are at a high risk of vanishing due to methamphetamine use.

Methamphetamines were brought to the state of Wyoming in the late 1990s by a Mexican drug cartel led by Jesus Martin Sagaste-Cruz.⁴ His drug cartel was already established in Utah and Nebraska.⁵ He later developed a business plan to target

¹ The term “tribal reservation” for the purposes of this thesis is the author’s preferred term when referring to land bases of Tribal Nations, federally, state, and unrecognized Indian tribes in the United States.

² Banda, P. Solomon, “Tribes Try To Navigate Jurisdictional Issues in Law Enforcement,” Albuquerque Journal, Associated Press, Sept. 25, 2007, accessed at <http://www.abqjournalnews/state/apissues09-25-07.htm> (last visited Oct. 10, 2007).

³ “Drug Dependency in the US,” Belfast Telegraph, April 21, 2006, accessed at <http://belfasttelegraph.co.uk/news/features/story.jsp?story=687885> (last visited Apr. 24, 2006).

⁴ Brodie Farquhar, “Meth Ring Targeted Reservations,” Casper Star Tribune.Net, Aug. 21, 2005, accessed at <http://www.casperstartribune.net/articles/2005/08/21/news/41c31e54beae4ff87257063007c5f12.txt> (last visited Mar. 20 2006); Banda, *supra* note 2.

⁵ Michael Riley, “Utah-based Meth Sellers Prey on Indians,” The Denver Post, Nov. 5, 2005, accessed at <http://deseretnews.com/dn/view/0,1249,635159110,00.html> (last visited Jan. 22, 2008).

Indian reservations⁶ and replace alcohol addiction with methamphetamine addiction.⁷ In 2001, Cruz and his gang infiltrated the Wind River Reservation in Wyoming, home to the Eastern Shoshone and Northern Arapaho Tribes. This reservation was already being targeted by smaller drug rings.⁸ Similar to other Indian reservations across the United States facing this methamphetamine epidemic, the Wind River Reservation must not only contend with the issue of criminal activity by non-Indians on Tribal land but also criminal activity by non-U.S. citizens.

Since the U.S. Supreme Court decision in *Oliphant v. Suquamish Indian Tribe*,⁹ Tribal Nations no longer exercise criminal jurisdiction over non-Indians for crimes committed on Tribal lands. Criminal jurisdiction is now a complicated maze for Tribal Nations leaving them with very little options to protect their people and land base from criminal outsiders. Tribes have to defer these situations to the federal and/or state police. The methamphetamine epidemic highlights the critical need to address the problems of Tribal criminal jurisdiction over non-Indians (as it is currently situated with state and federal laws).

Concerning non-member Indians, Tribes do have criminal jurisdiction powers. The U.S. Supreme Court ruled in *Duro v. Reina*¹⁰ that Tribes do not possess powers of criminal jurisdiction over non-member Indians. Shortly after, the U.S. Congress

⁶ The term “Indian reservation” for the purpose of this thesis is used only when referencing another article that uses that same term. Additionally, the term “Indian Country” may also be used in the same sense; both terms referring the U.S. definition in 18 U.S.C. § 1151.

⁷ Banda, *supra* note 2.

⁸ Sarah Kershaw, “Drug Traffickers Find Haven in Shadows of Indian Country,” *The New York Times*. Feb. 19, 2006, accessed at <http://www.nytimes.com/2006/02/19/national/19smuggle.html> (last visited Feb. 25, 2008).

⁹ 435 U.S. 212 (1978).

¹⁰ 495 U.S. 676 (1990).

passed the “Duro-Fix” by amending the Indian Civil Rights Act¹¹ to recognize Tribal authority to “exercise criminal jurisdiction over *all Indians* as one of the powers of self-government.”¹²

Furthermore, when an Indian commits a crime on a reservation that is not the Tribe in which they are enrolled in as Tribal member, that individual is subjected to the concurrent jurisdiction of the Tribe and the federal government, and in certain situations the state government as well. The U.S. Supreme court affirmed this inherent sovereign power of Tribes in the *U.S. v. Lara*¹³ case. The Court held that the double jeopardy clause does not prohibit the federal government from prosecuting a crime even after a Tribal government has done so in their own court so long as the Tribe acted in their capacity as a sovereign governing authority.

Beyond the usual ways of addressing drugs problems through prevention programs and rehabilitation, Tribes must also attack this issue by asserting their inherent rights to protect their community’s health, welfare, and reservation borders through exercise of criminal jurisdiction. A close examination of the relationship between Tribal sovereignty and state and federal laws is critical. Exactly how well is the current system working? Tribal nations can no longer continue to leave their police protection loopholes open for criminal activity of non-Indians to exploit. They need to respond to these types of epidemics quickly and effectively before the

¹¹ 25 U.S.C. §§ 1301-1303.

¹² 25 U.S.C. § 1301 (2).

¹³ 541 U.S. 193 (2004).

federal government attempts to enact any new legislation or the US Supreme Court rules unfavorably in a court case that further diminishes Tribal sovereignty.

Furthermore, research in any area concerning methamphetamine use by Native Americans is a critical issue that requires immediate attention. The Wind River Reservation and other Tribal Nations, particularly Tribal Nations with smaller populations, are at risk of losing their younger generations and future existence to this drug epidemic. Adult members of Tribal Nations using methamphetamine are committing violent crimes towards other members, sometimes resulting in death, harming children mentally and physically, with the possibly result of losing an entire generation of Tribal members and citizens, Tribal culture and knowledge, and language.¹⁴

B. Thesis Statement

Thesis Statement: The Wind River Reservation's best remedy to the methamphetamine epidemic that has plagued their community is through creative legal solutions within Tribal law.

¹⁴ The purpose of this proposed thesis is to analyze the criminal prosecution of non-Indians on Tribal lands through Tribal, state, and federal law and focus on which avenues are available to Tribal Nations through self-determination. The Wind River Reservation within the state of Wyoming is used as a case study for the purposes of this research because of the conditions that have arose as a result of this reservation experiencing a heavy influx of methamphetamines.

The methodology I intend to use in my research will comprise mainly of researching court cases, law review articles, news articles, and other documents such as testimonies before Congress. Textual analysis of written documents and articles will be the most effective way of researching this topic for this type of legal research. I did not conduct interviews of any person(s) from the Eastern Shoshone and Northern Arapaho Tribes nor use any information obtained for research purposes in ways that may be harmful to their community and beliefs.

Research Questions: (1) How has the methamphetamine epidemic posed problems onto the Wind River Reservation; and (2) What options are available to the Wind River Reservation and other Tribal Nations experiencing a similar methamphetamine epidemic influx from outside reservation boundaries to regulate criminal activity of non-Indians on Tribal lands under the *Oliphant* ruling?

C. OVERVIEW OF THESIS

Chapter one of this thesis will discuss what is methamphetamine and how it affects the body physically and psychologically. The chapter will examine how methamphetamine affects the entire Tribal community. The last section of chapter one will review the influx of methamphetamine on to the Wind River Reservation.

In chapter two, the historical development of U.S. Indian policy and the barriers it has created for tribal criminal jurisdiction will be reviewed. Following this, the role of the state of Wyoming in the methamphetamine epidemic on the Wind River Reservation will be discussed, as well as the current state of the epidemic on the reservation.

Chapter three will detail the current initiatives Tribal Nations across the U.S. are implementing as a result of methamphetamines infiltrating their communities. This section will discuss possible remedies for the Wind River Reservation and explain the feasibility of banishment as the most viable option. Lastly, chapter four will give concluding remarks about methamphetamine epidemic plaguing Tribal Nations and the ideas presented in this thesis.

Chapter 1: Overview of Methamphetamine Epidemic on the Wind River Reservation

A. WHAT IS METHAMPHETAMINE?

The drug methamphetamine also referred to as ‘meth’ for short, carries an extensive variety of street names such as ice, crank, crystal meth, and glass.¹⁵ It can be snorted, smoked, swallowed, drank in a liquid form, and even injected.¹⁶ If methamphetamines are produced in a home where children are present, they can be exposed to the toxic chemicals through absorption, inhalation, or ingestion.¹⁷ The potential damage this drug can create is volatile due to the inexpensive cost to manufacture and its appeal to drug users versus other street drugs.

Methamphetamine is a cheap drug to manufacture and can be produced in a household kitchen.¹⁸ It can be made from several household items such as paint thinner, Freon, drain cleaner, lithium from batteries, and Red Devil lye.¹⁹ However, what gives this drug its potency is ephedrine and pseudoephedrine, which both can be found in many over the counter cold medicines.²⁰ What is unique about this particular drug is that all of its ingredients are legal and can easily be acquired. It is when those ingredients are fused together that they produce an illegal narcotic.

¹⁵ Dr. Jane Carlisle Maxwell, *Methamphetamine: Epidemiological and Research Implications for the Legal Field*, 82 N. D. L. Rev. 1121, 1122 (2006); “Drug Dependency in the US,” *supra* note 3.

¹⁶ Dennis Wagner, “Meth lays siege to Indian country,” USA Today, Mar. 3, 2006, accessed at http://www.usatoday.com/news/nation/2006-03-30-meth_x.htm (last visited Apr. 12, 2006).

¹⁷ Maxwell, *supra* note 15 at 1131.

¹⁸ “Drug Dependency in the US,” *supra* note 3.

¹⁹ METH Awareness and Prevention Project of South Dakota, *Ingredients in Meth*, accessed at <http://www.mapps.org/Meth%20Ingredients.htm> (Feb. 2, 2008).

²⁰ Maxwell, *supra* note 15 at 1121.

Methamphetamines sharply stimulate the central nervous system by releasing large quantities of the neurotransmitter dopamine.²¹

What causes a person to use methamphetamines? This is generally a difficult question that speaks to the broader issues of drug use. However, the research on methamphetamines has produced some relatively broad insight as to why individuals decide to engage in methamphetamine use. First, as discussed earlier, the drug is inexpensive to manufacture and therefore cheap to purchase on the street.

Methamphetamines can be purchased at a price well below cocaine.²² In rural U.S.A. and on Tribal reservations, employment is limited and money is sparse. On several reservations, unemployment is often high and wages are low. This sort of poverty can breed the desire to use drugs to escape reality.

Secondly, many users falsely believe that it is a safer alternative in the realm of street drugs.²³ Users have claimed they replaced their crack-cocaine addiction with methamphetamines because they could function while high on the drug.²⁴ Others have stated that they switch to methamphetamines because someone they know had died from an overdose on another drug, like crack-cocaine.²⁵

²¹ “Drug Dependency in the US,” *supra* note 3.

²² *Id.*

²³ Christina von Mayrhauser, Mary-Lynn Brecht, M. Douglas Anglin, *Use Ecology and Drug Use Motivations of Methamphetamine Users Admitted to Substance Abuse Treatment Facilities in Los Angeles: An Emerging Profile*, *Journal of Addictive Diseases* vol. 21, no. 1 2002, at 45 ,53-54; Maxwell, *supra* note 15 at 1124.

²⁴ Mayrhauser, *supra* note 23 at 54.

²⁵ *Id.*

The third and perhaps most attractive appeal to users is the weight loss effect.²⁶ A person that is high on methamphetamines will be awake for days with high amounts of energy.²⁷ During these prolonged episodes the user's appetite is suppressed.²⁸ A person high on meth might not eat for three days but still have the energy to function. In relation to Indian Country, where obesity and diabetes rates are climbing, methamphetamine use becomes a perceived path to weight loss that works.²⁹ Additionally, other reasons a person may choose to start using methamphetamines are to stay awake, for energy, to enhance sexual experiences, and as a crutch to cope with mental illness, distress or trauma.³⁰

A significant reason methamphetamines have evolved into such an epidemic, besides its inexpensiveness to produce and appeal to users, is that it is very addictive. Repeatedly, former meth users will say that they were hooked the first time they used the drug.³¹ That first high can never be duplicated; the user can only try to achieve that same high by taking higher doses more frequently, but will never reach it again.³²

²⁶ Id., at 56-57; "Drug Dependency in the US," *supra* note 3.

²⁷ Maxwell, *supra* note 15 at 1124.

²⁸ METH Awareness and Prevention Project of South Dakota, *A Brief History of Meth*, accessed at <http://www.mappsd.org/Meth%20History.htm> (last visited Feb. 2, 2008).

²⁹ Lance Morgan, "Lance Morgan: Indian Country Now Has the 'Meth Diet,'" *Indianz.com*, Mar. 13, 2006, accessed at <http://www.indianz.com/News/2006/012926.asp>, (last visited Sept. 9, 2007); interview from film *G: Methamphetamine on the Navajo Reservation*, (Navajo Nation: Sheephead Films, 2004), DVD and available at <<http://www.sheepheadfilms.com>>.

³⁰ Mayrhauser, *supra* note 23 at 54-57.

³¹ *G: Methamphetamine on the Navajo Reservation*, *supra* note 29.

³² Michelle Kommer, *Protecting Children Endangered by Meth: A statutory Revision to Expedite the Termination of Parental Rights in Aggravated Circumstances*, 82 N. D. L. Rev. 1461, 1469 (2006).

B. The Effects of Methamphetamines on the User

What makes this ‘meth epidemic’ such a critical and devastating issue is the effects it has on an individual both physically and psychologically, in short-term and long-term consequences. The physical signs of methamphetamine use can be seen on the user’s body and by their behavior. The common physical signs of methamphetamine usage include sudden weight loss, “meth mouth,” and blotchy or scabby looking skin. Weight loss is generally dramatic and unhealthy. “Meth mouth” refers to a user’s mouth in which the teeth have been rotted out and they have the inability to produce saliva.³³ Users also tend to have hallucinations when high on methamphetamines and thus scabs resulting from scratching at imaginary insects.³⁴

The behavior of a methamphetamine user can have dramatic changes. The user will become increasingly agitated, easily angered, and violent.³⁵ What is particularly striking about this drug is the degree of violence it creates in the user. The crimes users commit while high or to get high are of a more extreme variety than other drug-induced crimes in general.³⁶ The addiction of methamphetamines creates a violent passion in the user that has not been matched by any other drug use.

The consequences of using methamphetamines have numerous acute short-term effects and long-term effects. The short-term physical effects include increased heart rate, increased blood pressure, temperature rise, increased rate of breathing,

³³ METH Awareness and Prevention Project of South Dakota, *Meth Mouth*, accessed at <http://www.mapspd.org/Meth%20Mouth.htm> (last visited Feb. 02, 2008).

³⁴ METH Awareness and Prevention Project of South Dakota. *Progression of Use: From Honeymoon to Hell*, accessed at <http://www.mapspd.org/User%20Progression.htm> (last visited Feb. 2, 2008).

³⁵ Maxwell, *supra* note 15 at 1126.

³⁶ *Id.*

constriction of blood vessels, and cardiac arrhythmia.³⁷ Short-term psychological affects include increased assertiveness, alertness, mood, sex-drive, energy, talkativeness and decreased boredom, loneliness, and timidity.³⁸

Long-term physical effects have been reported, such as strokes, cardiac valve thickening, decreased lung function, pulmonary hypertension, tremors, body weakness, dry mouth, oily complexion, anorexia, headaches, diarrhea, burned lips, and sore nose.³⁹ The long-term psychological effects include changes to the brain, poor cognitive function, and poor mental health (schizophrenia, dementia), confusion, hallucinations, memory loss, insomnia, paranoia, panic reactions, depression, and psychosis.⁴⁰

C. The Effects of Methamphetamines on the Tribal Community

Tribal Nations of the U.S. have a history with the onset of European settlement since the 1500s in which they have endured numerous assaults on their land, their resources, and their livelihood as a people. However, they were able to endure and adapt throughout the colonization process. Many Tribal Nations have developed successful Tribal economies.⁴¹ Tribal governments are also increasing the number of social services they provide to tribal members, such as on-reservation health care facilities, new buildings for after school programs, new housing sites for

³⁷ Id., at 1125.

³⁸ Id., at 1126.

³⁹ Id., at 1125.

⁴⁰ Id., at 1129-1131.

⁴¹ Examples include the Pequot Tribe of Connecticut, the Winnebago Tribe in Nebraska, and the Choctaw Tribe in Mississippi who all have developed tribal economies both within reservation boundaries and outside their tribal reservations borders.

senior citizens, scholarships for students, and rehabilitation centers. However, Tribal Nations and their people are still vulnerable to many things, including addiction and non-Indian influences that are destroying Indigenous culture and way of life. It is reported that nationally Native Americans have the highest rates of methamphetamine abuse.⁴²

Respecting the past, planning for the future, and addressing the methamphetamine epidemic that has plagued many Tribal communities remains a critical situation because the effects on individual Indians using methamphetamines can have devastating effects on the entire community. If the number of Tribal members who damaged physically and mentally by the use of methamphetamines begins to rise, the pool of Tribal members to lead their nations in the next fifty years will decrease. There could potentially be a limited number of Tribal members available and competent who know and can teach Tribal languages and cultures to future generations. The snowball effects of methamphetamine use by Indians can prove to be disastrous to entire reservation communities in numerous ways. The following is an outline of six of the most common effects: damage to the individual, child abuse, violence towards others, incarceration, prostitution and disease, and lastly the ripple effect into families and communities.

First, there is the physical damage the individual using methamphetamines does to his or herself. As discussed in chapter one, the user's body and mental

⁴² Office of Applied Studies, Substance Abuse and Mental Health Services Administration, "Methamphetamine Use, Abuse, and Dependence: 2002, 2003, and 2004," The Nations Survey on Drug Use and Health Report, Sept. 16, 2005, 2, available at <http://oas.samhsa.gov/2k5/meth/meth.pdf> (last visited Apr. 3, 2008).

capacity are damaged. Users run the risk of permanently handicapping themselves. In some cases, even death can occur as a result of the drug. Also, the adverse effect of depression from using may cause the user to commit suicide or severe injury to the self in other ways while high on the drug.

Second, the violence that is directed towards children is drastically increasing in numerous ways. The number of reported child abuse cases is soaring throughout Indian Country. Wind River Reservation experienced an increase of eighty-five percent in 2004 of reported child abuse cases.⁴³ A Northern Arapaho Tribal member, Andrew John Yellowbear, Jr. was convicted of murdering his twenty-two month old daughter in 2004.⁴⁴ The child's father and mother were both known as longtime methamphetamine users.⁴⁵ The San Carlos Apache Tribe in Arizona reported that twenty-five percent of their newborn babies were born addicted to methamphetamines.⁴⁶ Other reports include devastating birth defects from mothers who used methamphetamines while pregnant.⁴⁷

⁴³ "NCAI President Joe Garcia Calls for Massive, Collaborative Effort to Curb Methamphetamine Use and Drug Trafficking in Indian Country," *National Congress of American Indians*, Feb. 27, 2006, accessed at http://www.ncai.org/NCAI_President_Joe_Garcia_Call.19.0.html (last visited Mar. 20, 2006).

⁴⁴ The Reauthorization of the Indian Health Care Improvement Act: before the Senate Committee on Indian Affairs, 110th Cong. (2007) (testimony of the Honorable Richard Brannan, Chairman of Northern Arapaho Tribe), accessed at http://indian.senate.gov/public/_files/Brannan030807.pdf (last visited Apr. 3, 2008).

⁴⁵ *Id.*

⁴⁶ *Oversight Hearing on the Problem of Methamphetamine in Indian Country*: before the United States Senate Committee on Indian Affairs, 109th Cong (2006) (testimony of Chairwoman Kathleen W. Kitcheyan of the San Carlos Apache Tribe), accessed at http://www.indian.senate.gov/public/_files/Kitcheyan040506.pdf (last visited Apr. 3, 2008).

⁴⁷ *Id.*; "Fighting meth in Indian Country a top priority," *Indianz.com*, March 7, 2006, accessed at <http://www.indianz.com/News/2006/012845.asp> (last visited Mar. 20, 2006).

The children of methamphetamine users are often left to watch their parent get high, left with no care, or are in the vicinity where the drug is being made. Children are being hurt by physical abuse, sexual abuse, and in some cases drug abuse occurs by accidental ingestion or absorptions. The California Indian Legal Services, and organization that works with dozens of Tribal Nations, reports that nearly every single case they work on in which an Indian child is taken from their home, either one parent or both use methamphetamines, or the child was born with the drug in its system.⁴⁸ Parents addicted to methamphetamines are less likely to control their emotions, more likely to abuse their children when high on the drug, and neglect their children when coming down from a high.⁴⁹ Law officials in Arizona reported a twenty-nine year old *Native American* woman who took her son for a walk and later stabbed the child to death because while high on methamphetamines she believed her son to be possessed.⁵⁰

Third, methamphetamines create violent behavior, often extreme violent outburst, in the user and are reflected in the crimes they commit towards others. The Wind River Reservation reported spousal abuse rose 218 percent between 2003 and

⁴⁸ *Oversight Hearing on the Problem of Methamphetamine in Indian Country*: Before the U.S. Senate Comm. on Indian Affairs, 109th Cong. 6 (2006) (statement of Jefferson Keel, First Vice President, National Congress of American Indians), accessed at http://www.indian.senate.gov/public/_files/Keel040506.pdf (last visited Apr. 4, 2008).

⁴⁹ Roe Bubar, Marc Winokur, Winona Bartlemay, "Perceptions of Methamphetamine Abuse in Three Western Tribal Communities: Implications for Child Abuse in Indian Country," Tribal Law and Policy Institute. Jan. 2006, accessed at <http://www.tribal-institute.org/download/Final%20Meth%20Article%20for%20Printing%206-07.pdf> (last visited Jan. 22, 2008).

⁵⁰ Raam Wong, "Meth toll among Indians 'heart-breaking,'" *The Daily World* Washington Bureau, April 6, 2006, accessed at http://www.thedailyworld.com/articles/2006/04/06/local_news/03news.prt (last visited Apr. 12, 2006).

2006.⁵¹ In general, the number of assaults tripled and theft doubled.⁵² However, the Wind River police department only employs ten police officers,⁵³ creating more problems for an already strained law enforcement team. Nationally, the Federal Bureau of Investigation (FBI) estimates that up to forty percent of violent criminal cases involve methamphetamines.⁵⁴

The fourth common effect from methamphetamines is the number of Tribal members being lost to incarceration. A Tribal member who is involved with the production, distribution, or use methamphetamines and convicted may find themselves serving long prison sentences. With a drug epidemic, the number of Tribal members entering into the correctional systems or fleeing the state to avoid prosecution begins to rise. This is when the loss of individuals who can possibly rehabilitate back into society and contribute to the Tribal community economically, socially, and culturally occurs.

The fifth common effect is the rise in Tribal members resorting to prostitution to fund their methamphetamine habit or engaging in risky sexual behavior while under the influence of methamphetamines and thus increasing the spread of

⁵¹ Angie Wagner, "How meth came to an Indian reservation and took hold," The Seattle Times. Associated Press, May 1, 2007, accessed at http://seattletimes.nwsources.com/html/nationworld/2003687991_meth01.html (last visited Oct. 9, 2007).

⁵² *Oversight Hearing on the Problem of Methamphetamine in Indian Country*: Before the U.S. Senate Comm. on Indian Affairs, 109th Cong. 3 (2006) (statement of Jefferson Keel, First Vice President, National Congress of American Indians), accessed at http://www.indian.senate.gov/public/_files/Keel040506.pdf (last visited Apr. 4, 2008).

⁵³ Angie Wagner, *supra* note 51.

⁵⁴ *Oversight Hearing on the Problem of Methamphetamine in Indian Country*: Before the U.S. Senate Comm. on Indian Affairs, 109th Cong. 1 (2006) (statement of Jefferson Keel, First Vice President, National Congress of American Indians), accessed at http://www.indian.senate.gov/public/_files/Keel040506.pdf (last visited Apr. 4, 2008).

HIV/AIDS.⁵⁵ In 2005, it was reported that Native Americans have the third-highest rate of HIV/AIDS cases in the nation.⁵⁶ Methamphetamines are posing a new threat to increasing this statistic, because users tend to share needles that could be contaminated with the HIV virus or even hepatitis C.⁵⁷ Also, men who normally would not identify as being bisexual, are engaging in high risk sexual activity with other men while under the influence of methamphetamines.⁵⁸ In Native American populations, men who engage in sex with other men have the highest rates for HIV/AIDS infections.⁵⁹

Lastly, when an individual becomes consumed by a drug, it affects their entire family. Strain is added to the already stressed situation of their own lives when a family member is left to care for a user and/or the user's children.⁶⁰ For example, on the Wind River Reservation, John Washakie was left to care for his three grandchildren when suddenly one night his daughter, a methamphetamines user, dropped her kids off and left for three years.⁶¹ Washakie spent a lot of energy dealing with the children's emotions due to the abandonment of their mother.⁶²

⁵⁵ Riley, *supra* note 5.

⁵⁶ Andrew Catt-Iron Shell, "Women, girls, HIV and AIDS: The South Dakota perspective," *Indian Country Today*, Dec. 8, 2005, accessed at <http://www.indiancountry.com/content.cfm?id=1096412070> (last visited Feb. 2, 2008).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ "Drug Dependency in the US," *supra* note 3.

⁶¹ Angie Wagner, *supra* note 51.

⁶² *Id.*

D. The Influx of Methamphetamines onto the Wind River Reservation

The Wind River Reservation, located in the state of Wyoming is home to the Eastern Shoshone and Northern Arapaho Tribes. Under the Fort Bridger Treaty of 1868, the Eastern Shoshone were relocated to the state of Wyoming within a three million acre reservation.⁶³ In 1877, the U.S. government set aside a parcel of land on the Eastern Shoshone's reservation for the forced relocation of the Northern Arapaho,⁶⁴ their traditional enemies.⁶⁵ The Eastern Shoshone were not consulted for this additional land cession and later won a judgment in the U.S. Supreme Court for monetary compensation. Today, both Tribal Nations occupy the Wind River Reservation and jointly operate under the Joint Business Council while also each having their own governing council.

In the early 1900s and late 1930s, both Tribes experienced epidemics on their reservation due to tuberculosis and measles outbreaks, nearly decimating their population.⁶⁶ Nearly one hundred years later, the 3,700 members of the Eastern Shoshone and the 8,100⁶⁷ members of the Northern Arapaho began to face a new epidemic taking a toll on their people, methamphetamines.

Eastern Shoshone Business Council Chairman, Ivan Posey, testified before the Senate Indian Affairs Committee and described the devastating effects this drug is

⁶³ Eastern Shoshone Planning and Grants, "The Plan Overview," accessed at <http://www.easternshoshone.net/Planning%20%20War%20Horse%20set.htm> (last visited Jan. 24, 2008), Development History.

⁶⁴ Id.

⁶⁵ "Education on the Reservation," Wind River Country On-Line Magazine, accessed at <http://www.windrivercountry.com/windriverres/education.html> (last visited Feb. 9, 2008).

⁶⁶ Eastern Shoshone Planning and Grants, *supra* note 63.

⁶⁷ Kurt Lindblom, "The War on Meth in Indian Country," In-Sites Magazine, Spring 2007, accessed at http://www.ncjrs.gov/ccdo/in-sites/spring2007/americanindian_1.html (last visited Feb. 9, 2008).

inflicting onto their reservation. Chairman Posey stated that 65 percent of children placed in foster care have resulted from methamphetamine related issues.⁶⁸ Also, their reservation health care system is being pushed to its limits in resources because of increased vehicle accidents and domestic violence injuries, both stemming from the use of methamphetamines.⁶⁹

Methamphetamines began to traffic into way to the state of Wyoming in the late 1990s.⁷⁰ The governor of Wyoming published a bulletin in 2001 about the wide spread use of methamphetamines throughout the entire state.⁷¹ However, only one reference was made indirectly about the only reservation in the state's boundaries by calling it "Indian Country."⁷² Since, three methamphetamine rings have been dismantled on the Wind River Reservation.⁷³ The first ring was organized by the Goodman drug trafficking operation in May, 2005.⁷⁴ This drug ring involved several generations of the Goodman family, ranging in age from sixty-four to as young as nineteen.⁷⁵ A Tribal judge for both the Eastern Shoshone and Northern Arapaho courts, Lynda Munnell-Noah, was indicted and arrested for her involvement in the

⁶⁸ Brodie Farquhar, "Bills target reservation meth," Casper Star-Tribune Online, Jan. 27, 2007, accessed at <http://www.jacksonholestartrib.com/articles/2007/01/29/news/wyoming/56c36e40c6b6b44787257271002676e2.txt> (last visited Jan. 24, 2008).

⁶⁹ Id.

⁷⁰ Farquhar, "Meth ring targeted reservations," *supra* note 4.

⁷¹ Department of Justice, Bureau of Justice Assistance, *Wyoming's Methamphetamine Initiative: The power of Informed Process* (May 2001), by David Singh, Bulletin From the Field, Practitioner Perspectives, accessed at <http://www.ncjrs.gov/pdffiles1/bja/186266.pdf> (last visited Apr. 3, 2008).

⁷² Id., 13.

⁷³ Lindblom, *supra* note 67.

⁷⁴ Lindblom, *supra* note 67; Press Release, Drug Enforcement Administration, Year Long Investigation Nets 19 Arrests: Law Enforcement Joins Together to Dismantle Drug Trafficking Organization (May 31, 2005), accessed at <http://www.dea.gov/pubs/states/newsrel/denver053105.html> (last visited Feb. 9, 2008).

⁷⁵ See Appendix C.

drug ring.⁷⁶ As of 2006, twenty-two of the twenty-five federal defendants arrested in that bust have been convicted.⁷⁷

The operation was located within the Wind River Reservation boundaries, but the methamphetamines they were distributing were smuggled in from Mexico where the drug was manufactured in super-labs. The organization was serving twenty to fifty customers a day totaling at least one pound of methamphetamines a month.⁷⁸ In addition to methamphetamines, the family operation also distributed cocaine, marijuana, and prescription painkillers to residents on and off the reservation.⁷⁹

The second meth ring organization, and perhaps the most ruthless and destructive, was the Jesus Sagaste-Cruz Mexican cartel.⁸⁰ The leader of this cartel had a direct business plan to infiltrate Indian reservations and replace alcohol abuse with his product, methamphetamine.⁸¹ He sent members of his organization to several reservations with instructions to hand out free samples to attract customers and to become part of the community by developing romantic relationships with local Indian women and start the chain of distribution through these women.⁸² Additionally, only non-Indians were to actually handle any drugs because they could not be arrested by the Tribe.⁸³

⁷⁶ Drug Enforcement Administration, *supra* note 74.

⁷⁷ Noelle Straub, "Senate panel told of meth 'crisis' in Indian Country," *Missoulian.com*, Apr. 06, 2006, accessed at <http://www.missoulian.com/articles/2006/04/06/news/mtregional/news05.prt> (last visited Apr. 12, 2006).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Farquhar, "Meth ring targeted reservations," *supra* note 4.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

The third and latest methamphetamine ring to be brought to criminal prosecution was in 2006. A partnership between the Bureau of Indian Affairs police and the Drug Enforcement Agency brought down the Claudia Hermosillo Methamphetamine Drug Trafficking Organization. A two-year investigation ended this drug ring from distributing over seven pounds of methamphetamines a month on the Wind River Reservation.⁸⁴ Claudia Hermosillo is a U.S. citizen and life long resident of Wyoming. The other individual convicted along with her was Santiago Gonzalez-Cisneros, a resident alien from Mexico.⁸⁵ This drug ring does not have any ties to the previous two that were dismantled on the Wind River Reservation.⁸⁶

Finally, in 2006, the governor of Wyoming made a vow to help the two Tribal Nations combat the methamphetamine epidemic. By this time, three drug rings have been dismantled, 78 individuals convicted in federal courts in related crimes,⁸⁷ and the Chairman of the Eastern Shoshone, Ivan Posey, had already testified before the U.S. Congress. Although there have been effective prosecution efforts through cooperative law enforcement agreements with state and local law enforcement agencies, the process has been long and difficult. Unlike other criminal prosecutions, the ability of Tribal governments to exercise criminal jurisdiction over non-Indians has been foreclosed by U.S. law.

⁸⁴ Brodie Farquhar, "Crystal Meth Pusher gets life," The Casper Star-Tribune Online, Jun. 06, 2007, accessed at <http://www.casperstartribune.net/articles/2007/06/06/news/wyoming/056bd238d5e0b227872572f1007f1a9c.txt> (last visited Oct. 10, 2007).

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id.

Chapter 2: Review of Tribal Criminal Jurisdiction

A. Development of U.S. Indian Policy and Barriers to Tribal Criminal Jurisdiction

U.S. Indian policy in which each new treaty, piece of legislation, and court decision diminishes inherent Tribal sovereignty and thus, creates numerous barriers for Tribal Nations from effectively managing their Tribal affairs as they once had prior to European contact. In terms of criminal jurisdiction, the federal government has made several efforts which allow both the federal government, and in many cases, the state governments to have jurisdiction on Tribal lands. Whereas, once Tribal Nations managed all crimes in accordance with their own specific cultural and social norms, today criminal jurisdiction in Indian Country is often referred to as a “maze” because of the complex area of jurisdiction.⁸⁸

The U.S. Constitution through the Indian Commerce Clause has defined the federal government as the authority to enter into relations with Tribal Nations. Section 1, article 8, clause 3, states that “...to regulate Commerce with foreign Nations, and among the several states, *and with Indian tribes.*”⁸⁹ This clause in the U.S. Constitution has been interpreted as giving the federal government “plenary power” over Tribal Nations in the court case *U.S v. Kagama*.⁹⁰ The U.S. government use of the plenary power doctrine can be defined as full power over Tribal Nations, as well as the ability to abrogate the treaties made between the two sovereigns.

⁸⁸ Robert N. Clinton, “Criminal Jurisdiction over Indian Lands: A Journey Through a Jurisdictional Maze,” 18 Ariz. L. Rev. 503, 504 (1976).

⁸⁹ U.S. Const, art. VIII, § 1, emphasis added.

⁹⁰ 118 U.S. 375 (1886).

Through three major U.S. Supreme Court decisions, known as the “Marshall Trilogy,” Tribal Nations suffered major limitations to their inherent Tribal sovereignty. In only one of the cases was a single Tribal Nation an actual party to the case. However, these three cases today constrain all Tribal Nations in the U.S. The first case in this trilogy is *Johnson v. McIntosh*.⁹¹ The Supreme Court unjustly used the “doctrine of discovery” to establish that the U.S. government held title to the land they “discovered” in now the U.S. and that Tribal Nations only had the right to occupy the land. This severely disabled Tribal sovereignty and self-determination. Tribes could no longer determine for themselves to sell their land as they saw fit. Rather, the U.S. established the exclusive right to purchase Tribal lands held only to be occupied by Tribal Nations.

In the second case, *Cherokee Nation v. Georgia*⁹², the Supreme Court ruled that Indian Tribes are “domestic dependent nations.” Based on the Commerce Clause, the Court determined that Tribal Nations are not states or foreign governments because they are located within the U.S. boundaries. Justice Marshall coined this term and defined it as Tribes being wards to a guardian. Tribal Nations have been on this continent for thousands of years, governing their own internal and external affairs, and Justice Marshall reduced them to a child-like state in a single court opinion. The last case in the Marshall Trilogy is *Worcester v. Georgia*,⁹³

⁹¹ 21 U.S. 543 (1823).

⁹² 30 U.S. 1 (1831).

⁹³ 31 U.S. 515 (1832).

holding that states have no jurisdiction within Tribal Nations' territory without federal consent.

Moving forward with criminal jurisdiction, the U.S. Supreme Court ruled in *Ex Parte Crow Dog*⁹⁴ that the U.S. did not have jurisdiction over an Indian charged with murdering another Indian in Indian Country. The Court recognized the authority of Tribes under customary Tribal law. In 1885, Congress passed the Major Crimes Act,⁹⁵ extending federal jurisdiction over seven,⁹⁶ now 14,⁹⁷ major crimes when they occurred in Indian Country. The Major Crimes Act was in response to the *Ex Parte Crow Dog*, on the theory that Tribes were not competent to handle these sorts of crimes exclusively.

A year later, the constitutionality of the Major Crimes Act was upheld in *U.S. v. Kagama*.⁹⁸ At this point, Tribes were stripped of the ability to determine the best remedies for their community when affected by a “major crime,” but still retained full jurisdiction over misdemeanors, or minor crimes. In 1968, Congress passed another act that chipped away at Tribal jurisdiction over minor crimes, the Indian Civil Rights Act.⁹⁹ The Act prohibits any Tribe from punishing a convicted criminal with a sentence greater than one year imprisonment or a fine greater than 5,000 dollars.¹⁰⁰

⁹⁴ 109 U.S. 556 (1883).

⁹⁵ 18 U.S.C. § 1153 (1885).

⁹⁶ 18 U.S.C. § 1153 (a) (1885), The original seven major crimes listed in the Major Crimes act included murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny.

⁹⁷ The Major Crimes act is now amended to include murder, manslaughter, kidnapping, maiming, sexual abuse (chapter 109A, title 18), incest, assault with intent to commit murder, assault with danger weapon, assault resulting in serious bodily injury, assault against an individual under age of 16, felony child abuse or neglect, arson, burglary, robbery, felony theft.

⁹⁸ 118 U.S. 375 (1886).

⁹⁹ 25 U.S.C. §§ 1301-1303.

¹⁰⁰ 25 U.S.C. § 1302 (7).

Ten years later, in 1978, the U.S. Supreme Court ruled in *Oliphant v. Suquamish Indian Tribe*¹⁰¹ that Tribes have no criminal jurisdiction over non-Indians. The majority opinion of the Court concluded they were not aware of any prevalence of non-Indian crime on reservation that would require the Tribes the authority to try non-Indians and that Tribes do not have inherent jurisdiction to try and punish non-Indians. These statements wholly disregard the significance of all treaty agreements the U.S. entered into with Tribal Nations. This case created a significant diminishment to sovereignty and self-determination for Tribal Nations.

This was not the view of the entire Court. The dissenting opinion establishes the exact opposite of the majority ruling. Justice Thurgood Marshall stated:

I agree with the court below that the “power to preserve order on the reservation...is a sine qua non of the sovereignty that the Suquamish originally possessed.” In the absence of affirmative withdrawal by treaty or statute, I am of the view that Indian tribes enjoy as a necessary aspect of their retained sovereignty the right to try and punish *all persons* who commit offenses against tribal law within the reservation.¹⁰²

His dissenting opinion was contrary to the majority opinion and supported inherent Tribal sovereignty. Had this been the view of the majority, the criminal jurisdiction on Tribal reservations would be far less complicated than it is today. Tribal Nations would not have court systems viewed as loopholes; in which non-Indian criminals could commit crimes and fall outside the powers of the governing nation in which the crime took place.

¹⁰¹ 435 U.S. 191 (1978).

¹⁰² Id. at 213.

After this decision, Tribal Nations not only had to defer major crimes committed on their reservation lands to the federal government, but also crimes involving non-Indians. Statistics continuously report high numbers of crimes committed against Indians by non-Indian perpetrators and with Indians being victims of violence at a rate twice that of the general U.S. population.¹⁰³ Potentially large portions of Tribal affairs are currently not under Tribal authority. For example, the Wind River Reservation has a population of 21,000 residents; whereas only about half are enrolled members of either Tribe.¹⁰⁴ Meaning about half the residents are either non-member Indians or non-Indians and crimes committed by those non-Indians are not under the criminal jurisdiction of the Tribes.

For crimes involving Indian and non-member Indians, Tribal Nations retain criminal jurisdiction and Congress recognizes that inherent sovereignty. In the case *Duro v. Reina*,¹⁰⁵ the U.S. Supreme Court ruled that Tribes do not have jurisdiction over non-member Indians. The U.S. Congress viewed this as unworkable for Tribal Nations and followed up by passing a “Duro-fix,” in which the Indian Civil Rights Act was amended to recognize Tribal authority to “exercise criminal jurisdiction over *all Indians* as one of the powers of self-government.”¹⁰⁶

Furthermore, when an Indian commits a crime on a reservation where they are not a tribal member, that individual is subjected to the concurrent jurisdiction of the Tribe and the federal government, and in certain situations the state government as

¹⁰³ Kershaw, “Drug Traffickers Find Haven in Shadows of Indian Country,” *supra* note 8.

¹⁰⁴ “Education on the Reservation,” *supra* note 65.

¹⁰⁵ 495 U.S. 676 (1990).

¹⁰⁶ 25 U.S.C § 1301 (2006), emphasis added.

well. The U.S. Supreme Court affirmed this inherent sovereign power of Tribes in the *U.S. v. Lara*¹⁰⁷ case. The Court held that the double jeopardy clause¹⁰⁸ does not prohibit the federal government from prosecuting a crime even after a Tribal government has done so in their own court so long as the Tribe acted in their capacity as a sovereign governing authority.

B. The State of Wyoming's Involvement

The State of Wyoming has limited authority on the Wind River Reservation over criminal matters concerning non-Indians. Outside of that specific situation, the state of Wyoming has no inherent criminal jurisdiction. The U.S. Congress has passed legislation that extends the offer to other states the jurisdiction of civil and criminal actions on Tribal land through Public Law 280 in 1953.¹⁰⁹ Wyoming did not receive P.L. 280 jurisdiction.

It is imperative that Joint Business Council of the Eastern Shoshone and Northern Arapaho continuously and effectively pursue the to further advance their sovereignty to oversee reservation criminal matters as dire as the methamphetamine epidemic before the State government of Wyoming decides to push their criminal jurisdictional authority over Tribal lands and be allowed to under federal authority.

¹⁰⁷ 541 U.S. 193 (2004).

¹⁰⁸ U.S. Const. amend. V.

¹⁰⁹ P.L. 280, § 7, 67 Stat. 588, 590 (1953). The states under P.L. 280 include Alaska, Arizona, California, Florida, Idaho, Iowa, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, Utah, Washington, and Wisconsin.

Chapter 3: Tribal Law Remedies and Possible Solutions on the Wind River Reservation

Since methamphetamines' recent explosion throughout the U.S., state and local police forces have been convening to discuss how they intend to address the criminal policing issues this drug raises. However, what is noticeably absent from these discussions is Tribal criminal authority over non-Indians. Tribal governments and state law enforcement agencies both understand the applicability of federal law in that Tribes have no criminal jurisdiction over non-Indians committing crimes on Tribal lands. The point is that little to no consideration is being paid to a practical solution to this complex problem, allowing Tribal jurisdiction over non-Indians. The "weakness" or law enforcement "loophole" in which non-Indian criminals perceive Indian reservations as havens for havoc would be eliminated.¹¹⁰ Closing the gap, would take an act of Congress to overturn the ruling of *Oliphant* and similar cases to change the law on the books. Until a time comes where an "*Oliphant Fix*" is applied, it is vital that Tribal Nations push limits of self-governance further with their available resources.

This chapter will first discuss the jurisdictional initiatives Tribal Nations across the U.S. are implementing on their reservations. The second part of this chapter will discuss the applicability of these possible remedies on the Wind River Reservation. This chapter will conclude with a brief discussion on two other points

¹¹⁰ Christopher B. Chaney, "Overcoming Legal Hurdles in the War Against Meth in Indian Country," 82 N. D. L. Rev. 1151, 1155 (2006).

of law, the *Eastern Band of Cherokee Indians v. Arnulfo Torres*¹¹¹ case from the Eastern Cherokee courts and civil regulatory jurisdiction over non-Indians.

A. TRIBAL LAW INITIATIVES ACROSS THE U.S

Since the influx of methamphetamines onto reservations, Tribal Nations and other law enforcement agencies have developed some creative solutions to address the jurisdictional loopholes on Tribal lands.¹¹² Generally, Tribal Nations across the U.S. have begun to develop their own Tribal legal codes outlawing methamphetamines, cross-deputized Tribal B.I.A. officers, state, and local officers, created memorandums of agreements with federal, state, and local law enforcement agencies, and some Tribes have joined inter-tribal task forces.¹¹³ A few Tribal Nations have even brought back traditional methods of law and criminal punishment by enacting banishment or exclusionary codes.¹¹⁴

When methamphetamines began to first surface on tribal reservations, those Tribes began to experience related crimes but did not have the sufficient criminal codes in their law to even arrest an individual in possession of methamphetamines.¹¹⁵ Drugs like marijuana, cocaine, and heroin are common drugs that are deemed illegal.

¹¹¹ CR 03-143, 1529-1530-1531, 1819, (2005), Eastern Band of Cherokee Indians Supreme Court.

¹¹² Chaney, *supra* note 110 at 1160.

¹¹³ Carson Walker, "Crime Tracked On, Off Reservations: S.D. Task Force Used as Blueprint For Agencies Nationwide," Yankton Daily Press and Dakota.. Associated Press, Jun. 7, 2004, accessed at http://www.yankton.net/stories/060704/new_20040607029.shtml (last visited Apr. 24, 2006).

¹¹⁴ Dennis Wagner, *supra* note 16.

¹¹⁵ Id.; *Oversight Hearing on the Problem of Methamphetamine in Indian Country*: Before the U.S. Senate Comm. on Indian Affairs, 109th Cong. 5 (2006) (statement of Jefferson Keel, First Vice President, National Congress of American Indians), accessed at http://www.indian.senate.gov/public/_files/Keel040506.pdf (last visited Apr. 4, 2008).

However, methamphetamines are relatively new and in many situations were not included in written Tribal criminal codes.

Tribal police would have to look for other reasons to arrest an individual who was in possession or under the influence of methamphetamines.¹¹⁶ For example, the person may be publicly intoxicated or drinking and driving, both of which are generally crimes on Tribal lands allowing for an arrest. One of the initial steps Tribes must take to protect their borders is to outlaw methamphetamine use, possession, and distribution in their Tribal criminal codes.

The Navajo Nation was one of the first Tribal governments to outlaw methamphetamines on their reservation.¹¹⁷ In 2004, they passed a resolution that enacted the Navajo Nation Controlled Substance Act of 2004, which amended Title 17 of the Navajo Nation Code.¹¹⁸ The act includes a list of numerous substances, including methamphetamines, which are banned from the Navajo Nation, and it increased the criminal penalties (not exceeding the imposed limits allowed under I.C.R.A.) for possession, manufacture, transportation, sale, use, trade or delivery of all such controlled substances.¹¹⁹ It should be noted, that these codes are only criminally enforceable upon Indians and non-member Indians on the Navajo Reservation.

Following this, several Tribal Nations addressed the issue of enforceability of applicable law against perpetrators. Tribes, states, and other local governments have

¹¹⁶ Banda, *supra* note 2,

¹¹⁷ Elizabeth Ann Kronk, "The Emerging Problem of Methamphetamine: A Threat Signaling the Need to Reform Criminal Jurisdiction in Indian Country," 82 N. D. L. Rev. 1249, 1269 (2006).

¹¹⁸ Resolution of the Navajo Nation Council, 20th Navajo Nation Council, Third Year (2005).

¹¹⁹ *Id.*

begun to process the training and cross-deputizing¹²⁰ their officers so that their jurisdiction does not have to end at county, state, and reservation borders. Among other things, these cross-deputization agreements between Tribes, state, local, and federal agencies are agreed upon in Memorandums of Understanding (M.O.U.).

M.O.U.s have been very successful in patching up the limitations of Tribal criminal jurisdiction based on U.S. law and delivering policing services with positive results. The key issues with these agreements are that they have no permanence and do not further bolster Tribal sovereignty. In some cases, there is no reference to Tribal law, but rather a focus on permitting state law to be enforceable on Tribal lands.

The Navajo Nation created an M.O.U. with the New Mexico state police and the Bureau of Indian Affairs law enforcement agency in 1981.¹²¹ In section three of this agreement, it states “Peace Officers commissioned pursuant to this Agreement shall have all the powers of New Mexico Peace Officers to enforce state laws in New Mexico, including but not limited to the power to make arrests for violations of state laws.”¹²² There is no mention or acknowledgement of Navajo Nations’ government or laws in any part of the document. The agreement concludes in section eleven with the power of termination for the agreement held in the Chief of the New Mexico State

¹²⁰ This term is used when an officer of one law enforcement agency meets the training and qualification standards of another law enforcement agency and there usually an agreement between the two agencies recognizing the officer as having the duty to enforce the laws of both jurisdictions. Tribal police are sometimes cross-deputized with state police to enforce both tribal laws and the state laws and vice versa.

¹²¹ Agreement between the New Mexico State Police and The Navajo Tribe, July 1981, <<http://www.ncai.org/ncai/resource/agreements/New%20Mexico%20State%20Police%20&%20Navajo%20Tribe%20Agreement.pdf>> (09 February 2008).

¹²² Ibid, § 3

Police if any violation of the agreement occurs.¹²³ This M.O.U. agreement between the New Mexico State Police and the Navajo Nation offers a real immediate remedy to the policing situation, however it has no permanence. It can be terminated at anytime and it does not recognize the inherent authority of Navajo Nation laws on the reservation.

An example of a M.O.U agreement with stronger pro-tribal language is the “Cooperative Agreement Providing for Cross-Deputization of Law Enforcement Officers of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation, The City of Wolf Point, The City of Poplar, The Montana Highway Patrol, and Roosevelt County” (Montana Agreement).¹²⁴ Not mentioned in the title, but included in the text, is the Secretary of the Interior of the United States as a party to the agreement also. This M.O.U recognizes that the state code, the Tribe’s Constitution, and the U.S. code all provide the authority for each governing body to enter into cooperative agreements. This particular agreement extends the laws of each government to the cross-deputized officers from the other governments.

Whereas, all parties of the Montana Agreement recognized the laws of each other, they are only allowed to act according to the law; meaning that the agreement does not extend Tribal criminal jurisdiction over non-Indians. It only means that the state and local police are able to enforce Tribal law the same as a B.I.A. officer

¹²³ Id., § 11.

¹²⁴ Cooperative Agreement Providing for Cross-Deputization of Law Enforcement Officers of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation, the City of Wolf Point, the City of Poplar, The Montana Highway Patrol, and Roosevelt County, April 16, 2000, <<http://www.ncai.org/ncai/resource/agreements/Assiniboiné%20&%20Sioux%20Tribes%20-%20Montana.pdf>> (09 February 2008).

would. This agreement is a step forward from the Navajo Nation M.O.U with the state of New Mexico. However, neither agreement disturbs the present limits on Tribal sovereignty due to U.S. federal Indian policy.

M.O.U.s are great tools for law enforcement considering the complexity of Tribal criminal jurisdiction. However, these two examples show how critical it is for Tribal Nations to exert their jurisdictional authority and that it be recognized by neighboring law enforcement agencies. While the M.O.U.s do not extend criminal jurisdiction over non-Indians, the Fort Peck example further establishes the Tribal government as a legitimate sovereign nation by acknowledging their laws in the Montana Agreement.

On a larger scale, intertribal task forces have been formed involving cooperation of several law enforcement agencies to better investigate major drug trafficking of methamphetamines on and through reservations.¹²⁵ These task forces have been successful in dismantling several drug rings and in arresting drug dealers.¹²⁶ The Northern Plains Safe Trails Drug Enforcement Task Force, comprised of Tribal, state, and federal law enforcement agencies, reported the arrest of 50 individuals for drug trafficking on reservations, most of which were for methamphetamines in 2004. In Oklahoma, the Lighthouse Police (Chickasaw Nation), the DEA, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Highway Patrol, the BIA, and the Bureau of Alcohol, Tobacco, Firearms and Explosives took down the methamphetamines operations of Satan's Disciples, a

¹²⁵ Walker, *supra* note 113.

¹²⁶ *Id.*

violent street gang based out of Chicago, Illinois, resulting in one the biggest drug busts in their region through cooperative law enforcement. The enforcement was they called “Operation 700 Ranch Round-Up.”¹²⁷

The current trend among many Tribal Nations is to enforce or revive traditional and longstanding banishment or exclusionary powers.¹²⁸ This practice was generally viewed as a last resort and is rarely used.¹²⁹ In earlier history, when a Tribal Nation decided to banish an individual from their society it was similar to a death sentence for that individual. This is because in earlier times, without the Tribal community, it was much more difficult for a person to acquire shelter, food, and other basic necessities to survive. In modern times, a Tribal member who is banished from their Tribal Nation would generally be prohibited from entering the reservation, lose citizenship rights, and be denied access to benefits and services the Nation provides.

For purposes of this thesis, non-Indians would face complete expulsion from Tribal lands, subject to civil sanctions imposed for violating a banishment order, and community members may be prohibited from having any contact with that person. Furthermore, Tribal Nations deciding to use banishment in their justice system may also choose to recognize banishment orders from other Tribal Nations and thus prevent their reservation from becoming a haven for such banished individuals.¹³⁰

¹²⁷ *Oversight Hearing on the Problem of Methamphetamine in Indian Country*: Before the U.S. Senate Comm. on Indian Affairs, 109th Cong. 6 (2006) (statement of Jefferson Keel, First Vice President, National Congress of American Indians), accessed at http://www.indian.senate.gov/public/_files/Keel040506.pdf (last visited Apr. 4, 2008).

¹²⁸ Dennis Wagner, *supra* note 16.

¹²⁹ Patrice H. Kunesch, “Banishment as Cultural Justice in Contemporary Tribal Legal Systems,” 37 N.M.L.Rev. 85, 89 (2007).

¹³⁰ *Id.*, at 16.

The practice of banishment of Tribal members and non-tribal members is controversial among many Tribes. However, its revival comes on the tail of socially deviant and criminally dangerous activities within Tribal communities resulting from the influx of methamphetamines. As previously discussed, Tribal Nations within the U.S. have been hindered by U.S. Indian policy concerning civil and criminal jurisdiction. Therefore, banishment and exclusion are viewed as effective means of reestablishing order, safety and delivering justice in Tribal communities.¹³¹

The power to banish an individual is derived from the inherent sovereign status of Tribal Nations, Tribal constitutions, and written Tribal codes. From the very beginning of U.S. and Tribal relations, these sovereigns signed numerous treaties, in which many of them include explicit statements that Tribes have the inherent power to exclude members and non-members from their Tribe and reservation. Additionally, Tribal Nations may have this provision written into their Tribal constitutions or pass Tribal civil or criminal laws expressing the authority to banish an individual.

The Lummi Nation in the state of Washington immediately began to exercise this existing power in their Tribal constitution in reaction to the rise in drug crimes on their reservation.¹³² They referred to the ability to remove and banish individuals as one of the most fundamental sovereign rights.¹³³ Title 12 of the Lummi Nation Code

¹³¹ Id., at 3.

¹³² Lummi Nation Code of Law, Title 12 Exclusion Code, 2006.

¹³³ *Oversight Hearing on the Problem of Methamphetamine in Indian Country*: Before the U.S. Senate Comm. on Indian Affairs, 109th Cong. 6 (2006) (statement of Jefferson Keel, First Vice President, National Congress of American Indians), accessed at http://www.indian.senate.gov/public/_files/Keel040506.pdf (last visited Apr. 4, 2008).

of Law contains the Exclusion Code. The Code first states that banishment and exclusion is based on the custom and traditions of the Lummi people and that it was sometimes used against individuals who posed a threat to the community.¹³⁴ The Code cites this right as acknowledged in the 1855 treaty with the U.S., The Treaty of Point Elliot.¹³⁵

There are two fundamental purposes behind the Tribe's exclusion code: 1) to protect the health, safety, and welfare of the Lummi Nation and reservation community and 2) to provide the excluded person the motivation to seek drug treatment and rehabilitation so that one day they may no longer be viewed as a threat to the community.¹³⁶ These two purposes are fulfilled when a banished individual fulfills court orders for drug treatment and once completed are allowed back into the community. If the individual fails to complete the requests of the court, then restrictions and access to the community will be imposed.¹³⁷

All of these remedies discussed have their merits and also have proven some degree of success in fighting the onset of criminal activity resulting from methamphetamines. However, they fail to address the underlying concerns involving Tribal sovereignty or self-determination. Banishment and exclusion may be the exception. Both way, developing legal initiatives based on inherent Tribal sovereignty and self-determination is where long-term solutions can be made and enforced.

¹³⁴ Lummi Nation Code of Laws, Title 12 Exclusion Code, 2006, 12.01.010 Purpose.

¹³⁵ The Treaty of Point Elliot, Jan. 22, 1855, 12 Stat 927.

¹³⁶ Lummi Nation Code of Laws, Title 12 Exclusion Code, 2006, 12.01.010 Purpose.

¹³⁷ Id., at 12.03.040 Orders of Exclusion.

B. POSSIBLE REMEDIES ON THE WIND RIVER RESERVATION

Effectively combating the methamphetamine epidemic on the Wind River Reservation is a timely issue for both the Eastern Shoshone and Northern Arapaho Tribes. The onset of the epidemic and the restrictive federal laws the Tribes are required to operate under present a complex situation with no single cure-all remedy. The Tribes have the duty to protect Tribal lands, maintain peace, deliver justice and provide just punishment to the community of 13,400 Tribal members, non-member Indians, and the 10,000 resident non-Indians.¹³⁸ However, the Wind River Reservation does have a few options available to them. They can exercise their own Tribal sovereignty and self-determination to protect their Tribal members and social welfare from the corruption of harmful non-Indians, in particular.

The reservation currently has a system of sobriety checkpoints at reservation boundaries already in place.¹³⁹ The state of Wyoming has determined sobriety checkpoints as unlawful. However on the Wind River Reservation, home to two separate sovereign Tribal Nations, the Eastern Shoshone and Northern Arapaho, the police department operates under the Bureau of Indian Affairs law enforcement and is rightfully able to operate sobriety checkpoints.¹⁴⁰ The Wind River Police Department has stated that alcohol is directly tied to almost all crimes on the reservation.¹⁴¹ It has been proven that these checkpoints have reduced alcohol-related vehicle crashes by

¹³⁸ “Education on the Reservation,” *supra* note 65.

¹³⁹ Wind River Reservation’s Strategic Prevention Framework State Initiative Grant, *Community Strategic Planning Workbook*, accessed at <http://spfsig.preved.org/news.php> (last visited Mar. 21, 2008).

¹⁴⁰ *Id.*, at 18.

¹⁴¹ *Id.*, at 24.

17-25% and they also serve to prevent driving under the influence and bootlegging of alcohol on Tribal lands.¹⁴² Considering the recent influx of methamphetamine use and related crimes, these checkpoints could potentially be expanded to include methamphetamines and function as a means of preventing drug distribution on the reservation.

Taking a cue from other Tribal Nations, the Wind River Reservation could impose drug-testing of all individuals, Indian and non-Indian alike, employed by the Tribe or its businesses.¹⁴³ A non-Indian person working for a business of one of the two Tribes or in their government offices could rightfully be required to undergo drug-testing policies as the Tribes see fit. The checkpoints and drug-testing systems are both preventative measures. These two procedures could stop potential methamphetamine-related crimes committed by non-Indians that would ultimately be excluded from of the criminal jurisdiction of the Tribe should they transpire.

Currently, the two Tribes already have two separate M.O.U.s in effect for the reservation land area with the City of Lander, Hot Springs County, and the Bureau of Indian Affairs.¹⁴⁴ These two M.O.U.s are nearly identical and cite federal law, Tribal law, and city and state laws as the scope of powers to enter into those agreements.¹⁴⁵ These M.O.U.s have been useful tools in bringing down three major

¹⁴² Id., at 24.

¹⁴³ National Congress of American Indians, “Methamphetamine in Indian Country: An American Problem Uniquely Affecting Indian Country, Creative Tribal Solutions, Summer 2007, 5.

¹⁴⁴ Law Enforcement Agreement Among the Eastern Shoshone and Northern Arapaho Tribes, the City of Lander, and the Bureau of Indian Affairs, December 18, 2000.; Law Enforcement Agreement Among the Eastern Shoshone and Northern Arapaho Tribes, Hot Springs County, and the Bureau of Indian Affairs, December 19, 2008.

¹⁴⁵ Id., at 3.

methamphetamine drug rings, as discussed in chapter one. Conversely, these agreements are only temporary fixes and offer no lasting permanence to the criminal situation, or further extension of the sovereignty of either the Eastern Shoshone or Northern Arapaho Nations.

The two current M.O.U.s are excellent starting points for the Wind River Reservation in its efforts to combat the influx of methamphetamines and crimes within their boundaries. Banishment, however, offers a stronger permanent remedy and could prevent future drug epidemics and related criminal activity without compromising inherent Tribal sovereignty and self-determination. Red Lake Chippewa Tribal Chairman Buck Jourdain similarly agrees that M.O.U.s and tasks forces with state and local police are not always the best route.¹⁴⁶

The Red Lake Reservation in Minnesota is experiencing the influx of methamphetamines and related crimes also. The reservation is a closed reservation, meaning all Tribal land is contiguously trust land and only Tribal police and/or the FBI can investigate crimes. The Minnesota State Police do not have any authority on the Red Lake Tribal lands. The Red Lake Chippewa will not join the drug tasks forces with neighboring communities because Chairman Jourdain states even though the Tribe has good working relationships with the neighboring communities, the Tribe's sovereignty is too important to relinquish in those types of agreements.¹⁴⁷

¹⁴⁶ Elizabeth Stawicki, "Tribal Sovereignty poses challenges for local law enforcement," Minnesota Public Radio, Mar. 10, 2006, accessed at <http://minnesota.publicradio.org/display/web/2006/03/07/reservationdrugs/> (last visited Mar. 20, 2006).

¹⁴⁷ Id.

The Eastern Shoshone Tribe has entered into five treaties with the U.S. government. Two of these five treaties provide the contextual source of power to revive banishment and exclusionary powers. In article two of the 1868 Treaty made with the Shoshone and Bannocks, the boundaries of the Wind River Reservation are outlined and then followed by this statement, "...shall be and the same is set apart for the absolute and undisturbed use and occupation of the Shoshonee [sic] Indians herein named.." ¹⁴⁸ This same clause is repeated again, verbatim, in the 1874 Congressional Ratification of the Brunot Cession Agreement of September 1872. ¹⁴⁹ Later in 1904, when the U.S. made an agreement with the Wind River Reservation to allot their reservation land and open any surplus parcels of land for non-Indian white settlement, it states in article X, "It is further understood that nothing in this agreement shall be construed to deprive the said Indians of the Shoshone or Wind River Reservation, Wyoming, of *any benefits to which they are entitled under existing treaties or agreements*, not inconsistent with the provisions of this agreement." ¹⁵⁰

Currently, the two Tribes operating under a Joint Business Council do not have any written codes providing for banishment or exclusionary punishments. ¹⁵¹ Depending on the Tribes' wishes, intent, and traditional customs, they may write their exclusionary or banishment code to fit their needs. Separate provisions can be made for Tribal members and non-Indians if they choose. Sanctions of banishment can be

¹⁴⁸ The Treaty of Fort Bridger with the Shoshonee and Bannacks, Jul. 3, 1868, 15 U.S.T. 673.

¹⁴⁹ 1874 Congressional Ratification of the Brunot Cession of September 1871, Dec. 15, 1874, U.S.-Shoshone Tribe. 18 U.S.T. 291.

¹⁵⁰ Land Cession Agreement of 1904, Apr. 22, 1904, U.S.-Shoshone Tribe., 33 U.S.T. 1016, emphasis added.

¹⁵¹ Shoshone and Arapaho Law and Order Code, Title VI.

civil or criminal and temporary or permanent. Severity of the crime may warrant banishment of an individual for five years or the Tribe may feel a life long exclusion would be appropriate.

C. Eastern Band of Cherokee Indians v. Arnulfo Torres

The situation on the Wind River Reservation is not unique; other Tribal Nations are also experiencing an influx of non-U.S. citizens coming onto their reservations. Similar to non-Indian U.S. citizens, foreign nationals are mixing into the community through common reasons of employment, marriage to local citizens, and in search of new opportunities for their lives in general. On the other hand, as discussed earlier in this thesis, Mexican nationals running drug cartels are specifically targeting Indian reservations because they feel they will be able to blend in with the other citizens and not be subjected to Tribal laws.¹⁵² This was not the case for a Mexican national Arnulfo Torres on the Eastern Cherokee reservation in 2005.

Torres attempted to blend in with the community and was living with a few female Tribal members. Authorities were already aware of him and other Mexican nationals moving into the community and knew where they resided.¹⁵³ Legal action was initially brought against Torres when he was arrested for driving while impaired and failed to stop at a stop sign.¹⁵⁴ This case rose to the Eastern Cherokee Supreme Court when he appealed a lower court's decision not to dismiss the case for lack of

¹⁵² Farquhar, "Meth Ring Targeted Reservations," *supra* note 4.

¹⁵³ *The Eastern Band of Cherokee Indians v. Arnulfo Torres* CR 03-41, Eastern Band of Cherokee Indians, The Cherokee Supreme Court (Apr. 12, 2005), ¶ 11, accessed at <http://www.tribal-institute.org/opinions/2005.NACE.0000007.htm> (last visited Apr. 3, 2008).

¹⁵⁴ *Id.*

jurisdiction, being that he is not an Indian, but a citizen of the Republic of Mexico.¹⁵⁵

During the trial period, Torres was arrested again for driving while impaired, driving on a revoked license, and second-degree child abuse of a Tribal member.¹⁵⁶ In the opinion of the court, the judge answers the question of jurisdiction:

Does the Cherokee Court, an independent tribal court of the Eastern Band of Cherokee Indians, a federally recognized Indian tribe, have jurisdiction to try and to punish the defendant Torres, a citizen of Mexico who is not an Indian, for violating the criminal laws of the Eastern Band of Cherokee Indians? We answer the issue, yes.¹⁵⁷

The judge justifies his decision by saying:

This Court holds that neither Congress nor the United States Supreme Court nor the Fourth Circuit Court of Appeals has specifically prohibited the jurisdiction of Indian Tribal courts over non-Indian aliens of the United States on criminal charges.¹⁵⁸

As discussed in chapter two of this thesis, the judge is referring to the *Oliphant* decision which explicitly states “non-Indian citizens of the United States.”¹⁵⁹

Therefore, the U.S. Supreme Court decision remained silent regarding aliens or foreign nationals.

Considering the situation on the Wind River Reservation with the Mexican drug cartels targeting their land and Tribal members, exercising jurisdiction over this population could pan out in U.S. Indian policy in two ways. The first is that trying non-Indian non-U.S. citizens in their courts could be endorsed by the federal

¹⁵⁵ Ibid, ¶ 9

¹⁵⁶ Id., 11.

¹⁵⁷ Id., 15.

¹⁵⁸ Id., 22.

¹⁵⁹ 435 U.S. 212 (1978).

government and thus allow the Wind River Reservation to self-determine the direction of the meth epidemic and any future situations with similar circumstances.

The second scenario could potentially be similar to the *Ex Parte Crow Dog* case discussed in chapter two, in which the U.S. Supreme court ruled that the U.S. did not have jurisdiction over an Indian charged with murdering another Indian in Indian Country and therefore recognizing the customary law to Tribal Nations. The U.S. Congress responded by passing the Major Crimes act. Potentially, the U.S. Congress could pass federal legislation recognizing federal criminal authority over U.S. foreign nationals in Indian Country. Ultimately, the result could be the further diminishment of Tribal sovereignty. It is critical that the Wind River Reservation take into careful consideration the time, resources, and possible outcomes this route would yield.

Any discussion of non-Indian jurisdiction on Tribal lands should also include civil jurisdiction of non-Indians. Tribal Nations retain civil regulatory authority in many instances which has been recognized by the U.S. federal government. For example, a non-Indian who is convicted for distribution, manufacturing, and trafficking methamphetamines on the reservation could be subjected to monetary fines and seizure of all associated property (houses, cars). There is one situation on a reservation in the State of New York, where the drug dealer who was enrolled with the Tribe, built an extensive compound on the reservation and owned several cars and boats.¹⁶⁰ If this individual had been non-Indian, the Tribe would arguably have the

¹⁶⁰ Sarah Kershaw, Monica Davey. "Plagued by Drugs, Tribes Revive Ancient Penalty," The N. Y. Times, Jan. 18, 2004, accessed at <http://www.nytimes.com/2004/01/18/national/18BANI.html> (last visited Apr. 24, 2006).

ability to handle this individual in a civil court action. If found in violation of civil laws, the Tribe could seize all of his property assets which is within their scope of jurisdiction in payment of fines imposed.

Additionally, many reservations, including the Wind River Reservation, are comprised of various land titles within their boundaries. For example, the reservation land base could include trust land, title held by the U.S., and fee land, title held by an individual and subject to state taxes and laws. A non-Indian known for trafficking methamphetamines within the reservation could be denied access to his parcel of land (assuming he owned it in fee-simple title) by the Tribe if the surrounding parcels of land were owned by the Tribe itself. These civil sanctions could hamper a drug dealer's intent to set up operations on the Wind River Reservation as well as send a strong message that non-Indians are not entirely free from Tribal jurisdictions and heavy penalties for criminal activity.

Chapter 4: Conclusion

In summation, the “methamphetamine epidemic” that is occurring on reservations nationwide has taken a firm grip within these Tribal Nations and their communities. This epidemic is example of another destructive factor that has exploited the weaknesses that U.S. Indian policy has left open for Tribal Nations. There are some good faith efforts made by state, local, and federal agencies to collaborate with Tribes to remedy this situation, it is ultimately best when Tribal Nations are able to fully control and preside over all affairs on their lands.

The Wind River Reservation, occupied by the Eastern Shoshone and Northern Arapaho, is experiencing this epidemic first hand. They have had three different drug cartels dismantled on their reservation. Two of which were based outside reservation boundaries by non-Indians. Theses drug ring busts were a result of cooperative work by Tribal police, state, and federal law enforcement agencies. However, as Chairman of the Eastern Shoshone, Ivan Posey, stated before Congress, there will be new drug dealers to take the place of those already arrested.¹⁶¹

As a result of the development U.S. Indian policy, the Wind River Reservation Tribal governments do not have criminal jurisdiction over non-Indians who commit crimes on Tribal lands. The methamphetamine epidemic has demonstrated the urgent need to address this issue of criminal jurisdiction that has been poorly framed by the federal government has poorly framed. Hindered by the

¹⁶¹ Testimony of Ivan D. Posey, Chairman of the Eastern Shoshone Business Council to the U.S. Senate Committee on Indian Affairs on The Problem of Methamphetamine in Indian Country, 2006.

*Oliphant*¹⁶² decision, the two Tribes must use creative Tribal law initiatives to address the methamphetamine epidemic.

Tribal Nations throughout the U.S. experiencing the same situation as Wind River have begun to develop their own Tribal legal codes outlawing methamphetamines, have begun to cross-deputize Tribal B.I.A. officers, state, and local officers, created memorandums of agreements with federal, state, and local law enforcement agencies, several have joined inter-jurisdictional task forces, created sobriety checkpoints, and developed policies on drug-testing of Tribal employees.¹⁶³ These initiatives have been shown to be effective on curbing the influx of methamphetamines. In spite of this, they are only temporary fixes not entirely based on inherent Tribal sovereignty and self-determination.

The revival of banishment of non-Indians who have proven to be hazardous to the community and welfare of Tribal members is a legal remedy within the sovereignty of Tribal governments. Banishment or exclusionary codes are based on inherent sovereignty of the Tribes, terms of treaty agreements made with the U.S., and written Tribal codes that can provide for lasting solutions and potentially preventing future exploitative epidemics.

¹⁶² 435 U.S. 212 (1978).

¹⁶³ Walker, *supra* note 113.

Appendix A: Review of Literature

Since the methamphetamine epidemic began to spread throughout Indian Country, numerous media outlets reporting on the resulting crime and arrests of drug dealers have surfaced and a limited number of scholarly articles about this subject-matter area have been published. This section will discuss two articles that are similar to the thesis topic of methamphetamines and Tribal criminal jurisdiction.

The first article is by Christopher B. Chaney, titled “Overcoming Legal Hurdles in the War Against Meth in Indian Country.”¹⁶⁴ In this article, Chaney discusses the two major legal hurdles for Tribal Nations are the status of the suspected criminal and the restrictions of the Indian Civil Rights Act (ICRA). He begins by giving a general overview of the statistics that have been reported about methamphetamines on Tribal reservations and the related criminal act and describing how criminals may perceive Tribal lands, with low funds for law enforcement, no criminal jurisdiction over non-Indians, and high rates of alcohol abuse, as ideal places to set up their methamphetamines operations.

The author explains how reducing the demand for methamphetamines through education and creative Tribal sentencing focusing on rehabilitation are the two key weapons. While this is not the focus of this article, this statement is a very critical and accurate goal reflecting the self-determination of Tribal Nations.

¹⁶⁴ Christopher B. Chaney, “Overcoming Legal Hurdles in the War Against Meth in Indian Country,” 82 N. D. L. Rev. 1151, 1155 (2006).

However, the solutions the two solutions Chaney puts forward to remedy the two legal hurdles stemming from the *Oliphant*¹⁶⁵ decision and the ICRA sentencing restriction focus more on the U.S. government's role and less on inherent Tribal sovereignty and self-determination. As an alternative to the *Oliphant* ruling, Cheney points to Tribal law, but relies solely on U.S. Supreme Court case *Merrion v. Jicarilla Apache Tribe*¹⁶⁶ and Felix S. Cohen's *Handbook on Federal Indian Law* as means for Tribal Nations to enforce banishment. Instead, if Tribal law is the source of his argument, it could have been made stronger by referencing treaties and Tribal constitutions.

In terms of federal law, he hints at cross-deputization as a remedy to the multi-jurisdictional policing situation, but refers to it as "Special Law Enforcement Commissions." As I will discuss in chapter three of this thesis, this options has proven to be successful, but is only a temporary solution. When one group of drug dealers are apprehended and punished in the legal system, new groups of drug dealers are soon to follow.

Overall, this article contributes to the study of methamphetamines in Indian Country. However, the author investigates remedies through federal laws, which does little to strengthen the inherent sovereignty of Tribal Nations in the U.S. or extend their rights to self-determination.

¹⁶⁵ 435 U.S. 191 (1978), in which the U.S. Supreme Court ruled Indian tribes do not have criminal jurisdiction over non-Indians who commit crimes on tribal lands.

¹⁶⁶ 455 U.S. 130 (1982).

The second article is by Elizabeth Ann Kronk, titled “The Emerging Problem of Methamphetamine: A Threat Signaling the Need to Reform Criminal Jurisdiction in Indian Country.”¹⁶⁷ The article is a general overview of the problems in criminal jurisdiction in Indian Country and how the development of it is inadequate to address the methamphetamine epidemic. Kronk introduces the situation by describing the Sagaste-Cruz drug cartel and its business plan to infiltrate Indian reservations. By using this drug cartel as an example, the author is able to briefly describe the methamphetamine problem plaguing reservations.

Kronk dedicates a significant portion of the article to explaining exactly why criminal jurisdiction in Indian country is a “complicated maze.” This explanation leads into her proposed changes to the Major Crimes Act, Indian Country Crimes Act, and the Indian Civil Rights Act. Her proposals are similar to those of Cheney puts forth in his article. In that, these pieces of federal legislation need to be amended. She suggests that the Major Crimes Acts should be amended to allow Tribal Nations to opt-in if they choose and that the Indian Civil Rights act should remove limitations on sentencing. Furthermore, the Supreme Court decision *Oliphant* should be changed by passing an “*Oliphant* Fix,” that would recognize inherent Tribal sovereignty over non-Indians in Indian Country.

The author does include a small section about the creative legal solutions Tribal Nations are developing themselves, such as anti-methamphetamine Tribal

¹⁶⁷ Elizabeth Ann Kronk, “The Emerging Problem of Methamphetamine: A Threat Signaling the Need to Reform Criminal Jurisdiction in Indian Country,” *North Dakota Law Review* vol. 82 No. 4 (2006): 1249 – 1271.

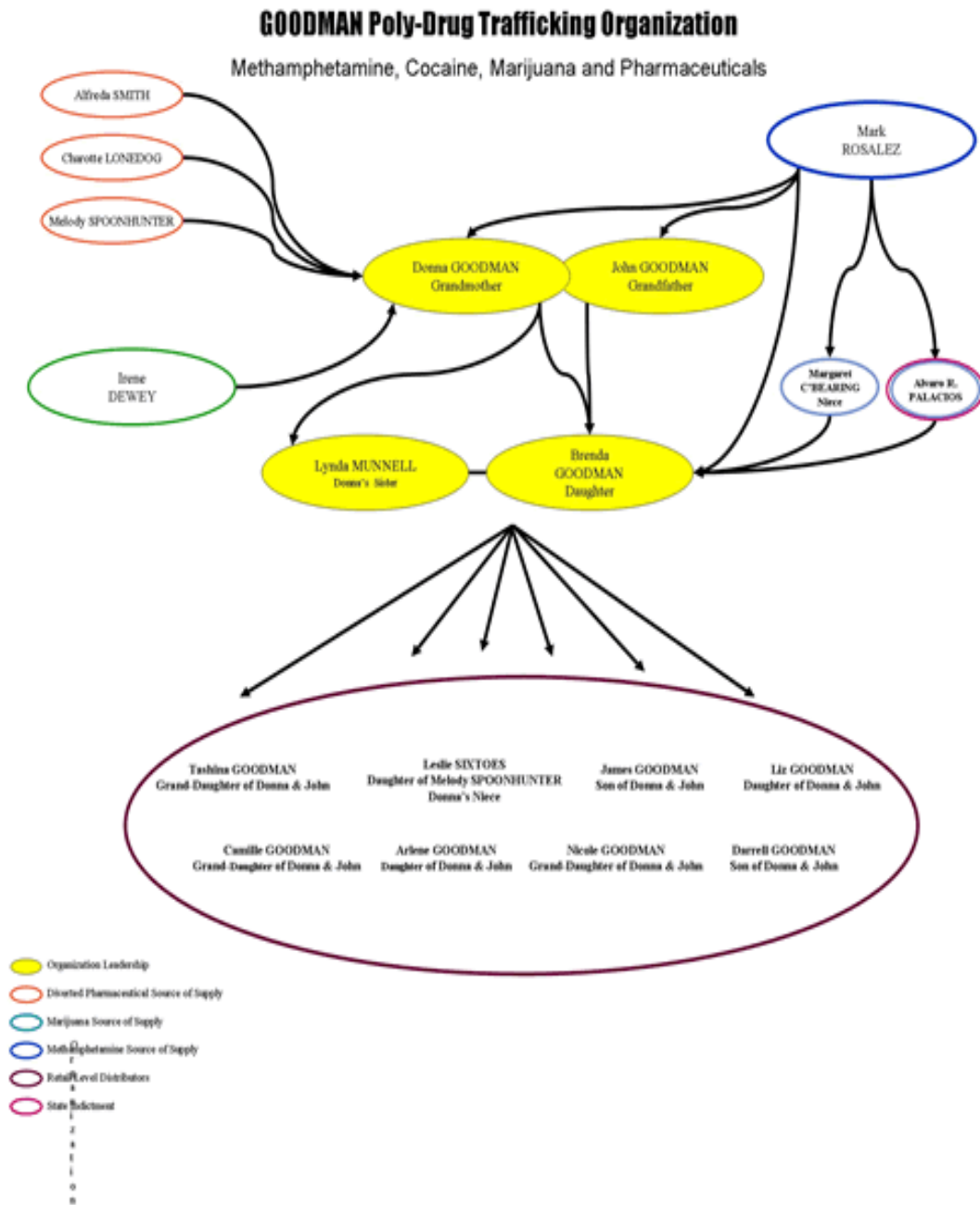
codes, culturally sensitive programs, law enforcement agreements with neighboring law enforcement agencies (Memorandums of Understanding), and drugs courts developed from federal funds. However, she fails to discuss or mention banishment of either Indian or non-Indian criminals involving methamphetamines.

Overall general both articles are great starting points and discussions for why federal laws and action are not working for Indian country's betterment. It is critical that the federal government has a clear understanding and respect for Tribal Nations' inherent sovereignty and self-determination. Ideally, the federal government should make many of the changes to federal laws mentioned in both articles. This thesis intent is to move forward from these articles and examine more closely at the self-determination of Tribal Nations and how they can act on their own behalf to remedy the methamphetamine epidemic through Tribal laws.

Appendix B: Timeline of Events

- 1997** Three methamphetamine labs discovered in Wyoming.
- 1997** Wyoming State Legislature asks for plan to combat methamphetamines.
- 1998** Wyoming State Legislature appropriates 3.2 million to seed Wyoming Meth Initiative.
- 1999** Twenty methamphetamine labs discovered in Wyoming.
- 1999** Wyoming State Legislature delivers 2-year, 5.2 million dollars to continue development and implementation.
- 2000** Mexican Cartel targets Wind River Reservation w/ free samples of methamphetamines.
- 2001** (May) D.O.J. bulletin on Wyoming Meth Initiative. Only one sentence regarding “Indian County” with no specific mention of the only reservation in the state.
- 2004** Eastern Shoshone report 4 homicides, 284 drug misdemeanors, and 124 child abuse River Tribal Judge Lynda Munnell-Noah arrested along with 19 other people in first drug ring dismantling.
- 2005** Combat Meth Epidemic Act unintentionally left out Indian Tribes.
- 2006** (April 5) Ivan Posey, Chairman of Eastern Shoshone, gives testimony to U.S. Senate Committee on Indian Affairs about methamphetamine epidemic at Wind River.
- 2006** (April 12) National Meth Initiative Survey by B.I.A. of New Mexico published.
- 2006** Third major methamphetamine ring tied to Wind River Reservation dismantled.
- 2006** (June 1) Governor of Wyoming vows to help Tribes with methamphetamine epidemic.

Appendix C: Chart of Goodman Drug Trafficking Organization



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